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ORDER 2001-10-13

Served: October 26, 2001



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Issued by the Department of Transportation  
on the 26th day of October, 2001

Joint Application of

AMERICAN AIRLINES, INC.

and

BRITISH AIRWAYS PLC

for approval of and antitrust  
immunity for alliance agreement

Docket OST-2001-10387 - 90

Applications of

AMERICAN AIRLINES, INC.

BRITISH AIRWAYS, PLC

for Blanket Code-Share  
Authorizations and Related  
Exemptions

Docket OST-2001-10388 - 68

ORDER ON RECONSIDERATION

On September 27, 2001, Continental Airlines filed a Petition for Reconsideration of Order 2001-9-12, by which we extended the deadline for answers to the Joint Application and denied Continental's motion to dismiss this proceeding. By Notice dated October 2, we called for answers to the petition by October 4, 2001. Answers were filed by the Joint Applicants, Northwest Airlines, and the City of Houston. By this order, we grant the petition for reconsideration, but deny the relief Continental requests.

Pleadings

Continental asks us to reconsider our decision and either to defer consideration of the joint applications or to dismiss them. Continental argues that expediting the case ignores the impact of the September 11 attacks, and that we have concluded that negotiating Open Skies with the United Kingdom is more important than efforts "to

ensure the continuing viability of the U.S. air transportation network.”<sup>1</sup> The airline emphasizes the need to address the consequences of the terrorist attacks, without the additional burden and distraction of this proceeding. It cites several circumstances that highlight the broad character of the uncertainties now faced by the industry, including Congressional action, widespread layoffs, and reductions in services. It then argues that the U.K. is rushing us into a favorable decision on the proposed alliance, and that we should await “truly open access for new entrants” at London before signing an Open Skies agreement. Finally, Continental reiterates arguments made earlier, to the effect that interested parties have still had far less time to review documents than was available in the previous proceeding; they also note that key information relating to London airports had not yet been submitted.

Northwest and the City of Houston both support Continental’s petition. Northwest declares that “the necessary factual underpinnings for any rational decision simply no longer exist.”<sup>2</sup> The carrier then argues that “this is the worst possible time to consider approval of an operating merger of the two dominant competitors in the largest U.S. international aviation market.”<sup>3</sup> Northwest concludes that approval of the alliance—the price of an Open Skies agreement—would inevitably be anti-competitive. The City of Houston adds that, on the current procedural schedule, civic parties are now less able since September 11 to offer thorough input on the alliance.

In their Answer, the Joint Applicants argue that Continental is essentially offering a successive petition, which should not be entertained. American and BA claim that Continental is mistaken, both in characterizing this proceeding as expedited and in treating the consequences of the attacks as irreversible: “Traffic levels and other market conditions will recover.”<sup>4</sup> The Joint Applicants note that Continental has joined other carriers in the assumption that revenues will return “to within 15 percent of pre-September 11 levels” within less than a year.<sup>5</sup>

## Decision

We recognize that the impact of recent events may legitimately enter into the evidentiary analysis of the effects of this alliance, an essential predicate to acting on the Joint Applicants’ requests. We are not at this point convinced, however, that these effects have been so imponderable that no reasoned analysis of the issues relevant here remains possible. The commercial aviation industry has always been fluid, complex, and unpredictable. Forecasting, as we have often observed in the context of carrier selection cases, has always been an inexact process, carrying the risk of unforeseen factors and events. Moreover, all carriers are striving to return to as normal an operating environment as is possible since September 11. To the extent that they believe that the competitive landscape has changed, the parties may address the nature and consequences of those changes in their answers and replies.

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<sup>1</sup> Petition of Continental, at 2.

<sup>2</sup> Answer of Northwest, at 2.

<sup>3</sup> *Id.* at 3.

<sup>4</sup> Answer of Joint Applicants, at 3.

<sup>5</sup> *Id.*

We also cannot accept Continental's proposition that negotiating Open Skies with the United Kingdom is somehow inconsistent with efforts to maintain the integrity of our air transportation network. On the contrary, we understand the need for *de jure* Open Skies to translate into *de facto* competitive benefits to both consumers and industry. We are aware of the burden on the parties of continuing with regulatory proceedings in the present difficult circumstances, and we have tried to reduce that burden by extending procedural dates.<sup>6</sup> However, the responsibilities of government continue. We are committed to carrying on the business of government, and this includes processing applications for antitrust immunity. We will not ignore recent circumstances in so doing, as the statute charges us with determining whether the alliance will be anti-competitive, and we retain the power to impose any and all appropriate conditions, should we decide to approve it. As noted above, parties will have the opportunity to address these issues in their answers and replies. We have been continuously monitoring airline operations and encourage parties to present their own forecasts and analysis of the post-September 11 environment in their answers and replies in this proceeding.

We will serve this order on all persons on the service list in both dockets.

**ACCORDINGLY,**

1. We grant the Petition of Continental Airlines for Reconsideration of Order 2001-9-12, to the degree consistent with this Order; and
2. We deny the relief requested by Continental Airlines.

By:

**READ C. VAN DE WATER**  
Assistant Secretary  
for Aviation and International Affairs

(SEAL)

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<sup>6</sup> Most recently, we have extended those deadlines to November 2 for Answers and November 9 for Replies.